

IN THE DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

APRIL BAYLIS,

Plaintiff,

v.

RED LION GROUP, INC., a corporation
of the State of Pennsylvania,

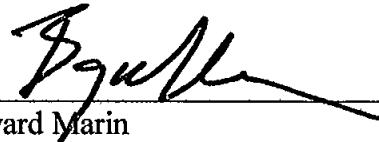
Defendant.

:
:
:
:
:
:
:
:
:
:
:

C. A. No. 04-1462-KAJ

APPENDIX TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR

SUMMARY JUDGMENT



Bayard Marin
The Law Offices of Bayard Marin
521 West Street
Wilmington, DE 19801
302-658-4200
Attorney for Plaintiff

Dated: August 30, 2005

TABLE OF CONTENTS

Relevant Portions of Deposition Transcript of Thomas O'Hanlon.....	A-1
Relevant Portions of Deposition Transcript of Elton Vincent.....	A-5
Relevant Portions of Deposition Transcript of Patrick Gerald McCarthy.....	A-14
Relevant Portions of Deposition Transcript of April Baylis.....	A-37
Relevant Portions of Deposition Transcript of John Peters.....	A-43
Affidavit of Rus Davis.....	A-51
Affidavit of Charles McClain.....	A-54

1 A It would depend on what test is being
2 performed.

3 Q Well, what kind of tests are there?

4 A There's an annual test. There's a
5 six-year maintenance test. There's the hydro test.

6 Q Before --

7 A Or -- I can't remember. It's either five-
8 or six-year maintenance. I'm sorry.

9 Q Before the fire extinguishers were sent
10 out on rental, were they inspected?

11 A I don't have any knowledge of whether they
12 were or not, because I wasn't involved in renting them
13 at all.

14 Q You weren't involved in that aspect of Red
15 Lion?

16 A No.

17 Q Now, on a fire extinguisher of the type
18 that I put in front of you there, on those type of
19 fire extinguishers, which are CO2 extinguishers, when
20 in proper use, CO2 should only come out of the end of
21 the cone; is that correct?

22 A Yes.

23 Q If CO2 comes out of anywhere other than
24 the end of the cone, is that not a malfunction of the

1 fire extinguisher?

2 A Not necessarily. It could have been that
3 it was damaged by something. Could have been dropped.
4 I mean, I wouldn't call it a malfunction of the
5 extinguisher.

6 Q If the extinguisher is used and CO2 comes
7 out of anywhere other than the end of the cone, is
8 that not a malfunction of that extinguisher?

9 MR. BROOKS: I'm going to object.
10 The question has been asked and answered. I mean, if
11 you're -- it's also seems to be --

12 BY MR. MARIN:

13 Q Assuming if it were not dropped.

14 A Again, my definition of "malfunction" is
15 that it mechanically malfunctioned. If CO2 comes out,
16 it's functioning.

17 Q But if CO2 comes out of anywhere other
18 than the end of the cone, isn't that a malfunction?

19 A Can be. Again, I think I've answered what
20 my opinion is on that. To me, a malfunction is that
21 it would not discharge. If it's discharging, it's
22 functioning.

23 Q It's functioning. Is it safely
24 functioning when CO2 leaks out of anywhere other than

1 the end of the cone?

2 A I can't speak to that. I don't know. It
3 depends on how much is leaking.

4 Q If CO2 leaks on someone's hand, isn't that
5 a malfunction of the fire extinguisher?

6 MR. BROOKS: Same objection.

7 BY MR. MARIN:

8 Q You can answer.

9 MR. BROOKS: You can answer if your
10 answer is any different than what it was before.

11 THE WITNESS: It's not.

12 BY MR. MARIN:

13 Q Under what circumstances can a fire
14 extinguisher of that type leak without it being a
15 malfunction?

16 A I can't answer that question.

17 Q Why can't you?

18 A It's not my expertise.

19 Q Now, you have O'Hanlon 1, that exhibit; is
20 that correct?

21 A Yes.

22 Q Now, in the second sentence of the second
23 paragraph you say, "With a CO2 extinguisher, if the
24 full valve sticks, the CO2 can escape at a very low

1 rate. You would not hear it or see it. In the
2 future, please bring instances such as this to our
3 attention prior to our invoicing you."

4 How did you come to that opinion?

5 A I would only be speculating how I came to
6 it if I told you.

7 But generally speaking, I would have
8 gone to the manager and asked them what would cause
9 this, because they're the persons that are expert in
10 that area. So they would have told me, This is what
11 would have caused it.

12 Q So this was not your opinion?

13 A No.

14 Q This is what you were told by someone?

15 A That would have been normal procedure.

16 Q Who was the manager that you spoke to
17 about this?

18 A I do not remember. But the manager should
19 have been Craig Ulshafer.

20 Q C-R-A-I-G?

21 A Yes, Craig Ulshafer.

22 Q A-L --

23 A U-L-S-H-A-F-E-R, I believe.

24 Q From personal knowledge, you have no idea

1 November 14, 2002, involving a lady named April
2 Baylis?

3 A I remember such an incident. I don't
4 remember the exact date, but I remember -- I think it
5 was November of 2002.

6 Q Right. Now, on -- I have a letter here
7 dated November 25, 2002. I don't have more than one
8 copy of this. But -- and you were corresponding with
9 a Mr. Davis?

10 A Mr. Davis.

11 Q At Red Lion -- excuse me. At Honeywell?

12 A He's the gentleman that called with the
13 problem. He's the gentleman that called -- the call
14 was given to me. I corresponded back and forth with
15 Mr. Davis a little bit and that was it.

16 Q Okay. What do you recall about the,
17 quote, problem, unquote?

18 A What I recall is Mr. Davis called, said
19 that they were doing some -- using some extinguishers
20 on training; they were doing the training themselves.

21 They used some of our extinguishers.
22 There was an extinguisher that malfunctioned, did not
23 operate correctly, and someone got CO2 on their hands
24 or whatever.

1 Q Uh-huh.

2 A This extinguisher would be charged through
3 this horn, through the nozzle. The valve would be
4 held open. CO2 would be put into the extinguisher
5 sitting on a scale. Get to the proper weight; it's
6 let go. The pin is put into the seal, and it's ready
7 to be used.

8 Q Is the horn and the piping that leads to
9 the horn taken off during the charging procedure?

10 A No, just the cone. This cone is taken
11 off.

12 Q The cone is taken off.

13 A And the CO2 line used for recharging is
14 hooked here. The valve is open; the CO2 is pumped in.
15 After it's full to the right weight, stop; the horn is
16 put back on.

17 Q Now, in maintenance of these fire
18 extinguishers, and particularly this kind of fire
19 extinguisher, is the nut that is between the housing
20 and the piping, which is called the -- what is the
21 official title of that nut?

22 A Couldn't tell you. Couldn't tell you.
23 It's just a nut.

24 Q Referred to as a wedge nut?

1 A A wedge nut? No, I doubt it. It's just a
2 nut. I don't know the nomenclature.

3 Q Pressure nut?

4 A There's -- this is a -- this has to do
5 with the relief of pressure here, this nut.

6 Q Okay.

7 A If the pressure builds up in this
8 extinguisher higher than what it should be, it will
9 blow CO2 out this nut all by itself. You don't have
10 to do anything.

11 These cylinders are 1800 psi. It
12 gets above that -- this is a safety disc. The safety
13 disc will rupture and blow the CO2 out.

14 Q Okay. But that would happen prior to
15 release of the CO2 using the handle; correct? In
16 other words, in the plan --

17 A It wouldn't normally happen if you're
18 using the extinguisher.

19 Q Right. So that wouldn't happen in any
20 kind of use of the extinguisher?

21 A Should not. I don't believe it should.
22 I've never seen it happen.

23 Q So when -- so if CO2 would come out of
24 this pressure nut area, that would be because it was

1 being filled in the plant and too much pressure was
2 put in; is that correct?

3 A This would be kept in a boiler room or
4 somewhere where it's too hot.

5 If the temperature builds up in this
6 cylinder for whatever reason, whatever reason -- this
7 is a safety disc. When this disc goes at a certain
8 pressure, the 1800 psi, I believe it is -- don't hold
9 me to that. Again, I haven't been involved in the
10 day-to-day operation of CO2, or any extinguishers, for
11 20 years.

12 Q But on a cold day with a fire extinguisher
13 outside, you wouldn't expect --

14 A This --

15 Q -- the pressure to --

16 A This should have -- this should have
17 nothing to do with it, as far as I can tell.

18 Q You have to wait for me to finish the
19 question, only because she has to record it, and we
20 want to make sure that it's the accurate recording.

21 A I'm sorry.

22 Q Is the nut between the piping and the
23 housing of the fire extinguisher ever taken off in
24 maintenance of the fire extinguisher?

1 extinguisher used on a training class or a
2 demonstration. I think we just went through this.

3 And I told him to tag the
4 extinguisher and send it in, we would look at it.

5 Q And this one extinguisher, was this the
6 only one tested?

7 A The only one that I looked at. There may
8 have been others tested. If any of them were empty,
9 they had to refill them.

10 And again, there's four trucks that
11 come in. They put all these extinguishers in a pile.
12 I don't know which ones were which. That's why I told
13 him to tag this extinguisher that there was a problem.
14 And that's the extinguisher that I looked at.

15 (Discussion off the record.)

16 BY MR. MARIN:

17 Q Did you have anything to do with the sale
18 of the fire extinguisher to --

19 A No.

20 MR. BROOKS: No. 1, you have to wait
21 for him for the question to be asked, even if you
22 think you know.

23 No. 2, I object to the question.
24 You're assuming it was a sale?

1 Q To the extent that you can answer the
2 question -- what inspection --

3 A They would be inspected according to
4 NFPA-10 regulations. All the service people go
5 through them to understand what the regulations are.
6 That's a weighing and inspecting, according to the
7 type of the extinguisher.

8 Q Do you know who inspected these particular
9 extinguishers?

10 A No, I do not.

11 Q Feel free to look at that letter.

12 In the letter from Mr. Davis back to
13 you, it says, "After I received your letter dated
14 11/25/02 describing only the fire extinguisher that
15 was tagged, I must say I was disappointed. I felt
16 that I had gone through great lengths to inform you
17 that all three of the five-pound extinguishers should
18 be inspected. Honeywell is concerned that there may
19 be a defective fire extinguisher in circulation that
20 could potentially injure someone else."

21 Did you respond to Mr. Davis about
22 this?

23 A Mr. Davis talked about the other
24 extinguishers at a later date. After our normal --

1 whatever this chain of events was.

2 When we talked, I told Mr. Davis to
3 tag the extinguishers. He tagged the extinguisher.

4 The other extinguishers we
5 weren't -- weren't concerned with -- I wasn't
6 concerned with. I was concerned with the extinguisher
7 that leaked. The other extinguishers came up and went
8 in with all the others, and I felt that we had checked
9 the extinguisher that he talked about, and that was
10 it.

11 Q So --

12 A I didn't check the others.

13 Q Right. They weren't checked so they may
14 or may not have leaked?

15 A That's correct. They weren't checked by
16 me, in my presence.

17 Q Now, during the operation of a fire
18 extinguisher -- and particularly this five-pound fire
19 extinguisher. During operation of the fire
20 extinguisher, should CO2 come out of the fire
21 extinguisher in any place but the end of the nozzle,
22 the end of the cone?

23 A No.

24 Q If CO2 comes out of the fire extinguisher

1 in any place other than the end of the cone, is that a
2 defective fire extinguisher?

3 A The mechanical --

4 Q During operation.

5 A The mechanical devices, anything can go
6 wrong. I would say there's something wrong if it
7 comes out anywhere except the horn.

8 Q So that's defective; correct?

9 A I guess you would use the word
10 "defective."

11 Q Now, a fire extinguisher, like a
12 five-pound fire extinguisher, is for use, say, in an
13 office setting; is that correct?

14 A This is used -- there's Class B and
15 Class C fires. They're flammable liquid and
16 electrical.

17 In an office, you wouldn't use
18 something like this, because it would not put out a
19 fire in your rugs or your carpeting or whatever.

20 Q But when a fire extinguisher such as this
21 is used, wherever it's used, a fire comes up usually
22 as an emergency situation; correct?

23 A Yes, normally.

24 Q Right. And normally a person around the

Elton H. Vincent
Director of Service & Training
Red Lion Group, Inc.
500 Red Lion Road
Philadelphia, PA 19115-1198

December 19, 2002

RE: Fire extinguisher Report 11/20/02

Dear Mr. Vincent,

I would like to thank you for the concern and effort that you have shown in working with us in regard to investigating the incident with one of the loaner fire extinguishers.

While we have had numerous conversations throughout this process, I would like to reiterate some of Honeywell's concerns. I would also like to point out that the person conducting the training is a long time veteran firefighter and former president of the Claymont, DE Fire Company.

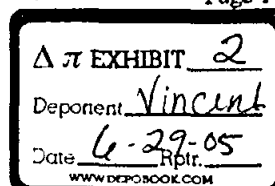
As you are aware, on Wednesday, 11/13/02, Honeywell received a delivery of 21 fire extinguishers to be used in training the next day. The incident occurred while using a 5-lb. CO₂ extinguisher (one of three delivered). The fire extinguisher in question was set aside and photographed. The fire extinguishers were then moved to our loading dock for pick-up the following day, Friday 11/15/02. When the fire extinguishers were moved to the loading dock the extinguisher in question was mixed with the other two of the same type. While on the loading dock, I placed a "Danger - DO NOT USE" tag on the extinguisher I believed to be involved in the incident. However I was not sure.

When we spoke on Monday 11/18/02, if you recall, I informed you that I had tagged a fire extinguisher, even though I was not sure if it was the correct one, and that I would recommend that all three be thoroughly inspected. At that time, you asked me to send a copy of our incident report. The report was sent on 11/22/02.

After I received your letter dated 11/25/02, describing only the fire extinguisher that was tagged, I must say I was disappointed. I felt that I had gone to great lengths to inform you that all three of the 5-lb. extinguishers should be inspected. Honeywell is very concerned that there may be a defective 5-lb. fire extinguisher in circulation that could potentially injure someone else. As you recall after receiving your letter, I reiterated Honeywell's concern. During our conversation you did mentioned that the extinguishers received from us were mixed in with others at Red Lion Group's unloading area and that you would continue to look for the defective fire extinguisher.

020631@11-17 CO2 Burn let

Page 1 of 2



A-13

1 would have been moved out to the
2 boneyard.

3 Q. Do you know for a fact that
4 the fire extinguishers were accepted in
5 the storeroom?

6 A. They were kept until that
7 morning, yes.

8 Q. How do you know where the
9 fire extinguishers were kept that night?

10 A. I remember the question of
11 how we were going to get them from the
12 storehouse to the boneyard.

13 Q. Who did you discuss that
14 with?

15 A. My boss.

16 Q. Who was?

17 A. Jeff Boyle.

18 Q. What's Mr. Boyle's job
19 title?

20 A. Maintenance supervisor.

21 Q. How was that resolved, the
22 issue of transporting them from the
23 storeroom to the boneyard?

24 A. I believe we got a cart with

1 sides on it and put them inside there and
2 pushed the cart out.

3 Q. Can you describe the cart
4 for me?

5 A. Basic cart of three-foot
6 wide, four-foot long, just a basic
7 utility style cart to push materials.

8 Q. I'm not quite sure what a
9 basic cart is. Is it four wheels or two
10 wheels?

11 A. Oh, I'm sorry. Four wheels,
12 utility cart handle that you just kind of
13 lean against and push the handle -- four
14 wheels, lean against the handle, metal
15 construction.

16 Q. Is it similar to a cart that
17 you would use at a Home Depot or a Lowe's
18 or something like that?

19 A. Yes.

20 Q. Got it. Than you. Are
21 there any sides on that cart other than
22 the very back?

23 A. This cart that we had had a
24 small four inch.

1 Q. Who transported them from
2 the storeroom to the boneyard?

3 A. I don't know that one. To
4 the best of my knowledge I don't know who
5 transported them that day.

6 Q. But you recall discussing it
7 with Mr. Boyle?

8 A. Yes.

9 Q. What was that discussion?

10 A. Who's taking them out back.

11 Q. Other than not you, you
12 don't know --

13 A. I don't know. The fire
14 extinguishers were unloaded to the back
15 of the loading dock and it was a busy
16 morning and we just knew that somebody
17 had to get the extinguishers out back.

18 Q. So someone brought them from
19 the storeroom to the loading dock or
20 directly from the storeroom --

21 A. I'm sorry, the storeroom and
22 the loading dock is the same building.
23 The loading dock is in the back of the
24 building. The building is approximately

1 40 foot in length and the front end is
2 the storehouse.

3 Q. Do you know who transported
4 the Red Lion fire extinguishers from the
5 loading dock to the storeroom when they
6 were received the day before safety day?

7 A. The loading dock and the
8 storeroom are the same building but I do
9 not know who transported them from the
10 receiving/storehouse building to the
11 boneyard where we had the training that
12 day.

13 Q. Do you know who received
14 them on behalf of Honeywell?

15 A. I would have to assume that
16 the receiver that day was John Garzia,
17 G-A-R-Z-I-A, because he works the
18 receiving/storehouse. That's his primary
19 job.

20 Q. Do you know whether he
21 inspected the fire extinguishers at the
22 time that they were received?

23 A. No, sir.

24 Q. On safety day did you have a

1 at that time?

2 A. Yes, sir.

3 Q. Do you recall who the other
4 instructor was that was on with you at
5 the time the employees first started
6 passing through the pan area that
7 morning?

8 A. I don't recall if John was
9 there for the very first group or not.
10 No. I might have been by myself for the
11 first group.

12 Q. When you arrived at the pan
13 area were the fire extinguishers already
14 delivered to the pan area?

15 A. Yes, sir.

16 Q. I take it you don't know how
17 they got there?

18 A. No.

19 Q. How many fire extinguishers
20 were in that group, if you know?

21 A. I would have to approximate
22 between 14 and 20.

23 Q. Did you have any way to
24 differentiate the fire extinguishers that

1 were Honeywell owned fire extinguishers
2 from the ones that were provided by the
3 Red Lion Group?

4 A. Yes. Red Lion Group's --
5 Honeywell's extinguishers were not to be
6 used at all that day. We intentionally
7 made contact with the vendor to supply
8 extinguishers for safety day so that we
9 would not deplete ours at the plant.

10 When they were delivered
11 they were kept in the receiving area
12 where we do not store our extinguishers.
13 And to the best of my knowledge they were
14 took from that area to the spot where we
15 were having training that day.

16 Q. Where were they when you
17 first found them?

18 A. I first noticed them in the
19 morning, they were in the receiving area
20 and then when I went back to start
21 preparing for students to come through
22 they were already there. They were
23 already transported from the receiving to
24 the setup area.

1 to Laurie, asked her if she was ready,
2 she said yes. She then pulled the pin,
3 squeezed the trigger and I walked up
4 beside Laurie while she extinguished the
5 pan.

6 Then actually Laurie had one
7 small mistake. She turned her back on
8 the fire. I reminded Laurie to never
9 turn her back on the fire to walk away
10 backing up. She did so. Since the
11 extinguisher was used I asked her to put
12 it to the side.

13 April then grabbed an
14 extinguisher, walked up. I asked her if
15 she was ready to go. She said yes. I
16 went up, I reignited the pan with the
17 flare that was still lit, set the flare
18 to the side again, walked back to April.
19 April then pulled the pin to an
20 extinguisher, squeezed the trigger, the
21 extinguishing agent came out of the side
22 of the extinguisher onto her hand instead
23 of the nozzle.

24 She startled, released the

1 nozzle and there's a little confusion
2 right there of like whoa, what was that?
3 She brushed off her hand, set that
4 extinguisher to the side, not with the
5 other ones, grabbed another extinguisher,
6 extinguished the fire, backed out and at
7 that time we looked at her hand and John
8 Peters and I advised her to go back to
9 the office and run some warm water over
10 it and that was the last that I saw of
11 her.

12 Q. Since then have you had any
13 more discussions with April about how the
14 incident happened?

15 A. No. I just asked her how
16 her hand was.

17 Q. When was that?

18 A. Off and on for the last two
19 years. From 2002 to 2004 before she took
20 a leave of absence.

21 Q. When was the last time you
22 asked her how her hand was doing?

23 A. I honestly -- I would be
24 guessing if I gave you an answer. I

1 employees?

2 A. No, sir.

3 Q. Was there any business
4 purpose to that or was that just sort of
5 in the course of --

6 A. Honeywell has reconfigured
7 how they do fire extinguisher training
8 and I didn't agree with it.

9 Q. How has it been
10 reconfigured?

11 A. The employee will now use
12 gloves, leather gloves and a safety
13 shield for training. Oh, and a fire
14 jacket.

15 Q. Why did you not agree with
16 that?

17 A. Because it's not practical.
18 In the event of a fire you're going to
19 grab a fire extinguisher, you're going to
20 extinguish it, you're not going to grab
21 or have the availability to grab this
22 equipment. Plus the leather gloves were
23 the wrong style gloves.

24 Q. When did they start doing

1 the training this way?

2 A. After the Baylis incident.

3 Q. So that would be the safety
4 day in '03?

5 A. Yes, sir.

6 Q. They did it that way in '03,
7 '04 and '05?

8 A. Yes, that's what they tell
9 me. I chose no longer to participate in
10 the extinguisher training.

11 Q. Did you participate in '03?

12 A. No.

13 Q. Why was that?

14 A. Difference of opinions with
15 the safety department.

16 Q. About that equipment that
17 you just discussed?

18 A. The difference of equipment
19 and just personal, just didn't feel like
20 participating. Just personal preference.

21 Q. Well, I'm trying to figure
22 out what the personal preference was
23 based on. Was it based on the fact that
24 they were in '03 implementing these

1 changes?

2 A. No. It was just still my
3 ability to get over an injury.

4 Q. An injury to you unrelated
5 to this incident?

6 A. No. An injury that I didn't
7 -- I had an employee get hurt. Now, it
8 had nothing to do with my instruction, it
9 had nothing to do with our -- Honeywell's
10 equipment. It was in my personal -- just
11 in my opinion it was just a faulty
12 extinguisher that day at the time that we
13 used it.

14 I didn't like the fact that
15 somebody got hurt so I just chose to step
16 aside for a year or two or three. And
17 then to compound the issues I didn't
18 agree with the line of training that they
19 put forward.

20 I like to train in realistic
21 situations and I felt that the extra
22 safety equipment was making the training
23 unrealistic.

24 Q. Did you have an opportunity

1 to look at the fire extinguisher after
2 the incident?

3 A. Yes, sir.

4 Q. Were you able to appreciate
5 any defect in the operational hardware of
6 the fire extinguisher?

7 A. The extinguisher appeared to
8 be in good working order after inspection
9 of Ms. Baylis.

10 Q. When she had initially
11 squeezed the trigger of the first
12 extinguisher did you see any CO2 leave
13 from the form?

14 A. A little bit. A little bit
15 left of the horn, which is the intended
16 area for it to be displayed. But a
17 larger portion seemed to come out of the
18 right angle piping where it attaches to
19 the extinguisher.

20 Q. Was April Baylis
21 right-handed or left-handed?

22 A. My recall is that she was
23 squeezing the handle of the extinguisher
24 with her right hand and would move the

1 nozzle with her left.

2 Q. After she extinguished the
3 fire did you ever see any CO2 on either
4 hand?

5 A. No.

6 Q. While she was using the
7 extinguisher, that is the first
8 extinguisher, did you see any CO2 leave
9 any place other than the horn?

10 A. Yes.

11 Q. Where did that CO2 go?

12 A. It appeared that a larger
13 portion of CO2 left where the piping and
14 the nozzle -- or the piping and the
15 handle area of the extinguisher and a
16 large portion of that went onto her left
17 hand.

18 Q. I thought I just asked you a
19 minute ago did you see any CO2 on her
20 hand?

21 A. The CO2 won't -- it will
22 evaporate into the area quite quickly.

23 Q. When you saw it leaving the
24 piping area, which you talked about

1 earlier, what did it look like?

2 A. It would remind you of like
3 a dry ice. It's a white cloud.

4 Q. When you looked at April's
5 hand after the incident did you see any
6 change in the skin?

7 A. There was a large area of
8 red.

9 Q. A large area of redness on
10 what part of the hand?

11 A. The top of her left hand in
12 between the thumb and the forefinger.
13 The thumb is the number one right on down
14 to number two.

15 Q. So it would be in the area
16 of the thumb and the two fingers that you
17 use for the piece sign?

18 A. Yes.

19 Q. That was on the palm side of
20 the hand or the opposite side of the
21 hand?

22 A. The portion that I noticed
23 was on the top side, not the palm, the
24 underneath. What I consider the

1 the time April got there, correct?

2 A. Yes, sir.

3 Q. Do you know whether those
4 fire extinguishers were provided by the
5 Red Lion Group or were they provided by
6 someone else?

7 A. I don't know that one.

8 Q. You indicated earlier that
9 you could get two uses out of certain
10 fire extinguishers, is it your testimony
11 now that the particular size fire
12 extinguisher that April was using you
13 could not get two uses out of it?

14 A. I would not attempt to get
15 two uses out of that extinguisher, no,
16 sir.

17 Q. Do you know whether you got
18 two uses out of any of those size fire
19 extinguishers before this event?

20 A. I would not try -- the
21 smaller extinguishers once the employee
22 was done extinguishing that fire I would
23 just empty out.

24 MR. BROOKS: Let's go off

1 the record for a second.

2 - - -

3 (Discussion held off the
4 record.)

5 - - -

6 BY MR. BROOKS:

7 Q. Is it your testimony this
8 morning that the fire extinguisher that
9 April was using, whether it was a five
10 pound or ten pound, that that size fire
11 extinguisher you would not get two uses
12 out of it?

13 A. Yes, sir. I would not even
14 attempt to utilize that extinguisher
15 twice.

16 Q. Do you know whether any
17 effort was made to inspect the fire
18 extinguishers once they were received at
19 Honeywell?

20 A. I do not know that answer,
21 no, sir.

22 Q. Once they were moved from
23 storage to the boneyard was any effort
24 made to inspect them at that point?

1 A. Not that I'm aware of, no,
2 sir.

3 Q. I think Mr. Peters said this
4 morning that he made no inspection of the
5 fire extinguishers at the boneyard that
6 morning, did you make any inspection of
7 the fire extinguishers that morning?

8 A. I did a brief inspection to
9 check the tags and the gauges of the
10 extinguishers that had gauges and a
11 visual of the dry chems to make sure that
12 they were good.

13 On a dry chem once the
14 extinguisher is activated a little red
15 button pops up on the side up in the top
16 of a window and I just did a glance over,
17 a very brief inspection to make sure that
18 there was no red indicators popped up.

19 Q. Are the dry chems only good
20 for one use or can the dry chems be used
21 more than once?

22 A. Training or in actual fire
23 suppression?

24 Q. Training.

1 A. Training, larger
2 extinguishers that you would find in the
3 manufacturing area of the plant we could
4 utilize for two training evolutions. The
5 smaller ones we would not.

6 Q. Based on your inspection of
7 the fire extinguisher after the incident,
8 if you had given it a complete and
9 thorough visual inspection before April
10 used it do you have an understanding of
11 whether or not you would have been able
12 to see any defect or any unusual
13 condition in the fire extinguisher had it
14 been inspected before the event? Do you
15 understand the question?

16 A. Yes, sir. My answer to that
17 question would be is from when I saw
18 where the CO2 had came out, if I had
19 inspected that prior to the use of Ms.
20 Baylis I would not think that I would
21 have noticed anything that would have
22 told me not to use that extinguisher for
23 that day.

24 Q. Did this particular fire

1 extinguisher have a gauge on it?

2 A. It should have, yes, sir.

3 Q. What did the gauge read, if
4 you know?

5 A. I don't know exactly if it
6 had a gauge. It should have a gauge
7 because that's the only way you know if
8 an extinguisher is good or been
9 discharged and I would have recollected
10 it would have been in the good.

11 Q. I don't want to put words in
12 your mouth, but my understanding of your
13 testimony is that you inspected the fire
14 extinguishers, at least the gauges of
15 them, that morning and based on your
16 inspection of the gauges none of the
17 gauges displayed any information that
18 suggested to you that any of them were
19 not ready for use.

20 A. I looked over the
21 extinguishers that we had there for
22 training and all the gauges were in the
23 good portion of the gauge and there was
24 no red indicators discharged up in the

1 larger dry chem extinguishers.

2 Q. So all of the gauges were in
3 order, in good condition?

4 A. Yes, sir.

5 Q. None of the gauges suggested
6 to you that any of the fire extinguishers
7 were either defective or not ready for
8 use?

9 A. No, sir. Correct.

10 Q. Same question with respect
11 to the information that you gleaned from
12 the tags, did every fire extinguisher
13 have the appropriate tag on it?

14 A. I can't say that every fire
15 extinguisher had the appropriate tag. I
16 just glanced down and looked at a few of
17 the tags and they just had inspections
18 and everything looked in good working
19 order that day.

20 Q. Of all of the tags that you
21 looked at that morning were any of them
22 out of order?

23 A. No, sir.

24 Q. So all of the paperwork was

1 current?

2 A. All the tags that were
3 associated with each extinguisher
4 appeared to be updated and proper, yes.

5 MR. BROOKS: Thank you.

6 That's all I have.

7 - - -

8 EXAMINATION

9 - - -

10 BY MR. MARIN:

11 Q. I asked counsel for Red Lion
12 to bring with him to the deposition a
13 couple fire extinguishers that are the
14 same or similar to the ones that were
15 used that day. Now, looking at these
16 extinguishers, are those similar to the
17 ones that April Baylis used?

18 A. Yes, sir.

19 Q. That size?

20 A. They were the smaller --
21 smallest style extinguisher of CO2, yes.

22 Q. Now, you've described
23 somewhere, or someone described in a
24 report, that the fire extinguisher, the

1 CO2 leaked from an area where the wedge
2 nut screws into the assembly, could you
3 point out a wedge nut on these fire
4 extinguishers?

5 A. What I consider the wedge
6 nut would be -- if I can use the pen,
7 would be where the piping screws into the
8 handle and there is what I consider a
9 compression fitting that goes down around
10 the piping that goes to the cone of the
11 extinguisher.

12 Q. Is that the area where you
13 saw the leak?

14 A. Yes, sir.

15 Q. This variously has been
16 described as a nozzle, is this the horn
17 which you call the nozzle?

18 A. The black area at the end of
19 the extinguisher, different people have
20 different names. A cone is one name
21 usually used for some of the larger
22 extinguishers. The nozzle some people
23 refer to it, but it is the end of the
24 extinguisher that's plastic in

1 construction used where the extinguishing
2 agent comes out of the fire extinguisher.

3 Q. Right. Now, when in use the
4 CO2 is to come out of the end of the
5 horn, right?

6 A. Yes, sir.

7 Q. The CO2 is not to come out
8 of the housing to the fire extinguisher?

9 A. Not in a properly
10 functioning fire extinguisher.

11 MR. MARIN: I have no
12 further questions, sir.

13 MR. BROOKS: Sir, you have
14 the right to read your deposition
15 transcript before it becomes an
16 official court document. The
17 court reporters we use generally
18 do very accurate work so many
19 times a witness will waive that
20 right. You have the right to read
21 it or you can waive that right.

22 THE WITNESS: I'm okay.
23 I'll waive that right, yes, sir.

24 MR. BROOKS: Very good.

1 A. Yes, sir.

2 Q. -- Las Vegas --

3 A. No; in Maryland.

4 Q. And what was the first job you
5 had when you returned to Delaware in '02?

6 A. I worked at a temp agency for
7 two months at Honeywell, which is where I
8 ended up permanent.

9 Q. When did you start at
10 Honeywell --

11 A. July 16. That was my start,
12 temporary. My permanent was September 16,
13 2002.

14 Q. And what was your job title or
15 job description originally?

16 A. Office coordinator.

17 Q. Is that what it was at the
18 time of this accident?

19 A. That's correct.

20 Q. Is that what it is now?

21 A. Yes, sir.

22 Q. What does the office
23 coordinator do?

24 A. I book travel, scheduling

1 A. We were -- I would say
2 probably, yes. We were trying to do
3 everything that we could before we got to
4 that point. I didn't particularly want to
5 have that done, but nothing is working so
6 it's pointing in that direction.

7 Q. Let me take you back to the
8 incident on November 14, 2002. Prior to
9 that date, had you ever had any formal
10 training on fire extinguishers?

11 A. Not formal; no. That date,
12 yes. But before that, no.

13 Q. Of the companies that you've
14 worked for throughout your career, is this
15 the first one that ever provided you any
16 formal training where you had hands-on
17 training with the fire extinguisher?

18 A. I believe so; yes.

19 Q. What time did you report for
20 work that day?

21 A. I always go to work at 7:00.

22 Q. Did you have a complete
23 night's rest the night before?

24 A. I'm sure. I sleep well.

1 at the point where he lights the fire, is
2 your extinguisher already in your hand or
3 is it on the ground?

4 A. It's on the ground. He lights
5 the fire. You pick up the extinguisher and
6 pull the pin, sweep, and it's called PASS.

7 Q. What's called PASS?

8 A. The steps that you take. It's
9 Pull, Aim, Squeeze, Sweep.

10 Q. Did he give you any literature
11 as part of the training?

12 A. No.

13 Q. Nothing to read?

14 A. No.

15 Q. As you are holding the fire
16 extinguisher, you pull the pin with your
17 left hand or your right hand?

18 A. Right.

19 Q. Is the pin on that fire
20 extinguisher on the right side of the
21 trigger or the left side of the trigger?

22 A. I believe it's on the right
23 side.

24 Q. Did it look like the fire

1 trigger, did it feel cold or any
2 temperature other than the outside air
3 temperature --

4 A. Not that I recall.

5 Q. What was the temperature that
6 day, the outside temperature, if you know?

7 A. It was nice. The sun was
8 out. But it was October. So I would say
9 probably, you know, 50-ish.

10 Q. And it was November 14 --

11 A. November. I'm sorry. That's
12 right.

13 Q. So is it fair to say it was
14 pretty brisk?

15 A. It was a nice day. I know it
16 was a very nice day.

17 Q. You picked up the fire
18 extinguisher with which hand?

19 A. To put the fire out?

20 Q. Yes, ma'am.

21 A. I had my -- I pick up with --
22 the trigger with my left hand and then I
23 sweep with -- the hose with my right hand.
24 So both hands, when I actually pick it up,

1 A. Right.

2 Q. Did he give you any training
3 on inspecting fire extinguishers before
4 use?

5 A. I don't recall that; no.

6 Q. Is it fair to say that from
7 the time he lit the fire to the time that
8 you get the extinguisher and put it out,
9 that's about 30 seconds?

10 A. Yes.

11 Q. Is it fair to say that during
12 the interim between the time that he lights
13 the fire and the time that you grab it and
14 pull the pin, that you don't have time to
15 inspect the fire extinguisher at that
16 point?

17 A. No. I would say I'm under the
18 assumption that these are -- the fire
19 extinguisher is in good working order.

20 Q. Just so we're clear, you
21 didn't think it was your job or duty to
22 inspect the fire extinguisher --

23 A. No; absolutely not.

24 Q. And it's fair to say that you

1 thought or would have assumed that Jerry or
2 one of the instructors --

3 A. No.

4 Q. -- inspected it? Is it fair
5 to say that you assumed that this fire
6 extinguisher was inspected by others before
7 you used it?

8 A. By others; yes.

9 Q. After the incident happened
10 and before you walked back to your office,
11 did you have any other discussions with
12 anyone around the scene of the training in
13 that area?

14 A. The scene of the training?

15 Q. The area --

16 A. Or what happened?

17 Q. Any other discussions with
18 anyone who was in the --

19 A. Vicinity?

20 Q. Of the actual training; yes?

21 A. The only discussion that I had
22 with anyone was regarding my hand after the
23 training.

24 Q. And have we already talked

1 instructors did when the folks got to the
2 site was help them through the use of a
3 fire extinguisher.

4 I believe prior to this
5 there was some classroom training on the
6 fire extinguishers. And one of the
7 things that we had to do when they came
8 to the site for the actual use of the
9 extinguisher was to reemphasize the
10 acronym PASS, P-A-S-S. This is part of
11 their training. What that stands for is
12 pull the pin, aim, squeeze and sweep.

13 And what this training does
14 is puts in their minds that acronym so
15 that if they get in a situation where
16 there is a problem and they suddenly
17 forget how to use the extinguisher that
18 goes through their head and they go
19 through the exercise.

20 Before they were using the
21 extinguisher we had asked them each
22 what's the acronym and what's it mean and
23 do it.

24 Q. Let me back up just a

1 boneyard. It's a fenced in area -- I'm
2 sorry, it was in Pennsylvania, not
3 Delaware. It's the other way around.

4 Q. What was the address for it?

5 A. The address?

6 Q. Right.

7 A. It was 6100 Philadelphia
8 Pike.

9 Q. Now, is that the same
10 address where the plaintiff, April
11 Baylis, worked?

12 A. Yes, that's correct.

13 Q. Did you teach any of these
14 blocks of time?

15 A. Well, when you say teach
16 that's stretching it, I think. What we
17 were doing in this boneyard with the fire
18 extinguisher is actually watching these
19 folks use the extinguishers. Most of
20 them never used one in their lives and
21 this is a good chance for them to get to
22 use one.

23 I believe the classroom
24 training was one issue, the actual usage

1 was with the hands-on. Our job was to do
2 the hands-on. We didn't really do any
3 instructing, other than going through
4 that acronym of PASS so that when they
5 came to the boneyard all they were going
6 to do is use that extinguisher to put the
7 flame out.

8 What we had was a pan of
9 kerosene which we ignited or we lit. Our
10 job primarily is to make sure they didn't
11 get too close to it and get burned.

12 Q. Where was the classroom
13 training being given?

14 A. It was being given in one of
15 our conference rooms and, again, I'm not
16 sure which one.

17 Q. How many people were given
18 the classroom training?

19 A. Every one should have
20 received the classroom training.

21 Q. Every employee should have
22 received it?

23 A. Yes. Yes.

24 Q. Then did every employee also

1 receive the hands-on training?

2 A. Yes, that's correct.

3 Q. Was everyone required to
4 receive the training?

5 A. Not really, no.

6 Q. So go back to my other
7 question. Why was it that you said
8 everyone should have received the
9 classroom training?

10 A. It was a safety day for the
11 company, everybody in the company, and
12 everyone had the opportunity to go to
13 that training. Now, if some didn't -- I
14 don't know if we kept a record of those
15 that did or didn't, I couldn't tell you
16 that. I wasn't there to record that.

17 Q. Did you give any of the
18 classroom training?

19 A. No.

20 Q. What do you call the two
21 people that oversaw the hands-on
22 instructions?

23 A. What would you call them?

24 Q. Right.

1 A. I would just say that they
2 were supervising the activity, I wouldn't
3 say they were instructing.

4 Q. So they weren't really
5 instructing, were they -- I'll back up.
6 Is it fair to call them instructors?

7 A. For some folks, yes, because
8 some folks had never used an extinguisher
9 before so we had to walk them through it.
10 For others that had used them before it
11 was just a matter of, okay, here's the
12 fire, just be careful, don't get burned.

13 Q. What do you call the area
14 where the flame was set? I understand it
15 was sitting in the boneyard.

16 A. Yes.

17 Q. What do you call the thing
18 that's being set, the fire?

19 A. It was a pan.

20 Q. A pan?

21 A. Yes. A pan of kerosene,
22 yes. It was probably about a four foot
23 by two foot wide, by maybe six inch deep
24 metal pan.

1 Q. The two instructors that
2 were positioned in the boneyard at
3 various times, I think you told me
4 earlier that you were not one of those
5 instructors.

6 A. I was with Jerry. I was
7 with Jerry McCarthy, yes.

8 Q. During what time frame was
9 that?

10 A. I believe it was at 10:00 to
11 12:00, I think it was.

12 Q. Okay. I'm sorry. Was it
13 during that period that April was
14 injured?

15 A. Yes, that's correct.

16 Q. Can you describe for me what
17 you remember of the incident that gives
18 rise to this lawsuit?

19 A. Okay. Well, April came out
20 and we had a variety of extinguishers in
21 an area lined up, and I don't recall
22 whether we handed her one or whether she
23 picked one up off the ground, but in any
24 case, she proceeded to the pan that was

1 lit and it was burning and she asked us
2 what do I do and we told her, go through
3 your acronym again and she pulled the
4 pin, she squeezed the handle and she
5 aimed the unit and almost as fast as she
6 aimed the unit you could see the CO2 come
7 out to put the fire out but you could
8 also see it wisping around the area of
9 the handle.

10 Now, at that time we didn't
11 realize that the unit was leaking. April
12 shut it off and she said something is
13 coming out on my hand see so we had her
14 put it down. Now, with CO2, there's an
15 extinguisher there, the whole top of the
16 unit ices up so you can't really tell
17 where it's coming from, but as it cooled
18 down I could see it was coming from, I
19 guess, that tubing on the side there.

20 Our main concern wasn't
21 really that at the time it was her having
22 a burned hand. So we told her whether
23 it's cold or hot it's a burn so we
24 instructed her to go back to her office

1 A. Again, I'm not an
2 extinguisher expert. I can look at it.
3 It looks the same -- looking at it was
4 when it came in but it was leaking.

5 Q. I don't mean to suggest that
6 you are an expert in the area of fire
7 extinguishers but from a layman's
8 perspective and from a user's perspective
9 were you able to appreciate any
10 malfunctioning part or any defective part
11 where the CO2 would have leaked from?

12 A. No. No, not really.

13 Q. When you looked at the fire
14 extinguisher after the incident did you
15 make any effort to squeeze the trigger to
16 see if it would --

17 A. Repeat itself?

18 Q. -- repeat itself?

19 A. I didn't, no. I did not.

20 Q. Do you know if anyone else
21 did?

22 A. No, sir, I don't. I don't
23 know if Jerry did or not. I didn't.

24 Q. It was just set aside as far

IN THE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APRIL BAYLIS,

Plaintiff,

v.

RED LION GROUP, INC., a corporation
of the State of Pennsylvania,

Defendant.

C. A. No. 04-1462-KAJ

AFFIDAVIT

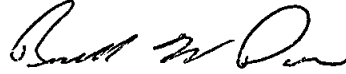
STATE OF DELAWARE :

NEW CASTLE COUNTY :

BE IT REMEMBERED that on this 29th day of August, 2005, personally appeared before me the subscriber, a Notary Public in and for the State and County aforesaid, Rus Davis, being by me duly sworn according to law, who did depose and say as follows:

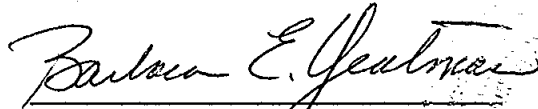
1. I am over the age of eighteen years.
2. I am of sound mind and am competent to make this Affidavit.
3. I am currently employed by Honeywell International Inc. ("Honeywell") and have been so employed for approximately 4 years. I am the health safety environmental specialist at Honeywell and was so on the date of the accident, November 14, 2002. I am familiar with Honeywell's practices and procedures.
4. In order to prepare this Affidavit, I have also reviewed the documents associated with the incident on Safety Day, November 14, 2002 including the Honeywell incident report, Honeywell incident review, packing slip from Red Lion Group Inc confirming receipt/ shipping of the extinguishers and the letter I sent to Red Lion Group, Mr. Vincent.
5. Honeywell Chemicals, a business segment within Honeywell, specializes in the manufacture of chemicals, among which include chemicals used in final products such as scents, sticky stuff for post-it notes, etc., pesticides, oils, etc.
6. I ordered the fire extinguishers for the safety demonstration on November 14, 2002.
7. Red Lion Group, Inc. was notified that the extinguishers were used for a safety day demonstration and their shipping receipt specifies as such.

8. The fire extinguishers in question were kept in a store room which was at normal room temperature. There were no extremes of temperature in the storeroom.
9. The store room is about 150 yards from the location where the demonstration took place.
10. The statements made in my letter of December 19, 2002 to Elton Vincent of Red Lion Group, Inc. are true to the best of my knowledge and belief.
11. In choosing Red Lion for the extinguishers, I relied on their expertise.



Russell W. Davis

SWORN TO and SUBSCRIBED before the day, month and year first written above.



NOTARY PUBLIC

My Commission Expires 2-6-09

Work Order #

AE1105008

CUSTOMER:

ALLI12

HONEYWELL, INC.
ATTN: RUSS DAVIS
6100 PHILADELPHIA PIKE
CLAYMONT DE 19703

RLG
RED LION GROUP INC.
Diversified Technologies for Fire, Security and Communications - Since 1920

500 Red Lion Road, Philadelphia, PA 19115-1198
(215) 676-6100 • Fax (215) 464-0154



S.O.S. DEFENDER



JAMES M. CASTLE



MEI SYSTEMS

DATE:

2

HONEYWELL
(FORMERLY ALLIED SIGNAL)
SITE: 6100 PHILADELPHIA PIKE
CLAYMONT DE 19703

Cont: RUSS DAVIS

Caller: RUSS DAVIS

Phone: 302-791-6724 Month Due:
SERVICE REQUESTED:

Phone: 302-791-6748

SUPPLY (15) CO2 EXTINGUISHER FOR IN-HOUSE FIRE DEMO ON
11/14/02
CU

initials →

CREDIT: Net 30 Day P.O.#.

DESCRIPTION	DONE	P/U	PRICE	DESCRIPTION	DONE	P/U	PRICE	TOTAL
WEIGH & INSPECT HALON				RECHARGE 5LB ABC				
6 YR MAINT HALON				RECHARGE 10LB ABC				
HYDROTEST HALON				RECHARGE 20LB ABC				
RECHARGE HALON				RECHARGE 5LB CO2				
RECHARGE PRES WATER				RECHARGE 10LB CO2				
HYDROTEST PRES WATER				RECHARGE 15LB CO2				
WEIGH & INSPECT WATER				RECHARGE 20LB CO2				
WEIGH & INSPECT CO2 TO 20LBS				HYDROTEST CO2 TO 20LBS				
WEIGH & INSPECT PRESS DRY CHEM				HYDROTEST DRY CHEM TO 30 LBS				
WEIGH & INSPECT CART, OPER D/C				6 YR MAINT DRY CHEM				
RECHARGE CART, OPER D/C				SERVICE CHARGE				
PARTS FURNISHED				MINIMUM CHARGE				

HYDROTEST NEEDED: _____

SALES TAX \$ _____

6 YR MAINT NEEDED: _____

TOTAL AMT \$ _____

CUSTOMERS SIGNATURE: *Russ Davis*

SERVICE TECHNICIAN: _____

IN THE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

APRIL BAYLIS, :
 :
 Plaintiff, :
 :
 v. : C. A. No. 04-1462-KAJ
 :
 RED LION GROUP, INC., a corporation :
 of the State of Pennsylvania, :
 :
 Defendant. :

AFFIDAVIT

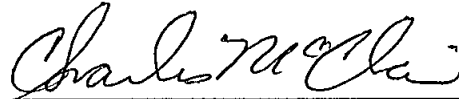
STATE OF DELAWARE :

NEW CASTLE COUNTY :

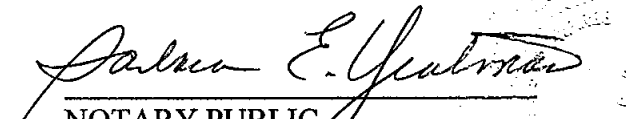
BE IT REMEMBERED that on this 29th day of August, 2005, personally appeared before me the subscriber, a Notary Public in and for the State and County aforesaid, Charles McClain, being by me duly sworn according to law, who did depose and say as follows:

1. I am over the age of eighteen years.
2. I am of sound mind and am competent to make this Affidavit.
3. I am currently employed by Honeywell International Inc. ("Honeywell") and have been so employed for approximately 14 years. I am a Mechanic 1/C. On November 13, 2002 and November 14, 2002 I was filling in for the Storehouse Operator 1/C. I am familiar with Honeywell's practices and procedures.
4. In order to prepare this Affidavit, I have also reviewed the documents associated with the incident on Safety Day, November 14, 2002 to include Honeywell's incident report as well as the packing slip from Red Lion Group Inc containing my signature confirming receipt of the extinguishers.
5. Honeywell Chemicals, a business segment within Honeywell, specializes in the manufacture of chemicals, among which include chemicals used in final products such as scents, sticky stuff for post-it notes, etc., pesticides, oils, etc.
6. I received the fire extinguishers from Red Lion on November 13, 2002.
7. The fire extinguishers were unloaded from the Red Lion truck and placed in Honeywell's storeroom.
8. None of the fire extinguishers were dropped or damaged by any Honeywell employee, to the best of my knowledge and belief.
9. The fire extinguishers remained locked in the storeroom until the next day.

10. The fire extinguishers for use in Safety Day were set aside and not mixed with any other extinguishers that were in the store room.


Charles McClain

SWORN TO and SUBSCRIBED before the day, month and year first written above.


NOTARY PUBLIC
My Commission Expires 2-6-09